



United States Attorney
Southern District of New York

86 Chambers Street, Third Floor
New York, New York 10007

December 12, 2007

BY FEDERAL EXPRESS

The Honorable Charles L. Brieant
United States District Judge
United States Courthouse
300 Quarropas Street, Room 275
White Plains, New York 10601

*Notice of Voluntary Dismissal
(Partick)*

Re: **Earlene Lamar v. Nancy Jenkins, et al.**
07 Civ. 11050 (CLB)

Dear Judge Brieant:

I am the Assistant United States Attorney representing defendants Nancy Jenks* and the Peekskill Area Health Center (the “Represented Federal Defendants”) in the above-referenced action, which the Represented Federal Defendants removed to this Court from New York Supreme Court, Westchester County, by a Notice of Removal filed December 6, 2007. I write respectfully to submit a Consent Notice of Voluntary Removal, signed by Plaintiff Earlene Lamar (the “Notice”). Neither of the Represented Federal Defendants has yet appeared in this action and, by signing the enclosed Notice, Plaintiff has voluntarily dismissed all claims against them, but not any other defendant, pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 41(a)(1)(i); see generally 8 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 41.30. We respectfully request that the Court docket this Notice.

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DOC #: _____
DATE FILED: _____

* Defendants Nancy Jenks is improperly named in the caption as Nancy Jenkins.

Thank you for considering this request.

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney

By:


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Encl.

cc: **BY FEDERAL EXPRESS** (with encl.)
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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EARLENE LAMAR,	:	ECF CASE
Plaintiff,	:	CONSENT NOTICE OF
-against-	:	<u>VOLUNTARY DISMISSAL</u>
NANCY JENKINS, M.D., DOUGLAS MARK	:	07 Civ. 11050 (CLB)
KAIDEN, M.D., SALVATORE PASQUALE, M.D.,	:	
JANE CHAN, M.D., BARRY KROSSER, M.D.,	:	
HUDSON VALLEY HOSPITAL CENTER, and	:	
PEEKSKILL AREA HEALTH CENTER,	:	
Defendants.	:	

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WHEREAS, on or about November 6, 2006, Earlene Lamar ("Plaintiff") filed a complaint (the "Complaint") in the above-captioned action against Nancy Jenkins ("Nurse Jenks"),* Douglas Mark Kaiden, Salvatore Pasquale, Jane Chan, Barry Krosser, Hudson Valley Hospital Center, and Peekskill Area Health Center ("Peekskill"), under Index Number 21921/06;

WHEREAS, on October 22, 2007, Michael J. Garcia, the United States Attorney for the Southern District of New York, certified that Nurse Jenks and Peekskill were acting within the scope of their federal employment at the time of the incidents alleged in this action, and therefore,

* The caption improperly lists nurse Nancy Jenks as "Nancy Jenkins, M.D."

pursuant to section 224(g) of the Public Health Service Act, 42 U.S.C. § 233(g), are deemed to be employees of the United States under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-2680;

WHEREAS, on or about December 6, 2007, the Office of the United States Attorney for the Southern District of New York, removed this action to this Court, on behalf of Nurse Jenks, Peekskill, and the interests of the United States;

WHEREAS, Plaintiff intends to discontinue this action against Nurse Jenks and Peekskill;

WHEREAS, neither Nurse Jenks nor Peekskill have answered or filed motions for summary judgment; and

WHEREAS, Rule 41(a)(1) of the Federal Rules of Civil Procedure provides that “an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action;”

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff, Nurse Jenks, and Peekskill, by their respective counsel, as follows:

1. Pursuant to section 224(a), (c), of the Public Health Service Act, 42 U.S.C. § 233(a), (c), and 28 U.S.C. § 2679(d), the United States shall be substituted as defendant in this action to the extent plaintiffs’ claims are against Nurse Jenks and Peekskill.

2. Plaintiff’s claims solely against Nurse Jenks and Peekskill are dismissed with prejudice and without costs or attorney’s fees to any party.

3. Plaintiff's claims solely against the United States are dismissed without prejudice and without costs or attorney's fees to any party.

4. The parties understand and agree that this stipulation does not waive any right or defense of any party under the FTCA, including but not limited to Plaintiff's right, if any, to bring an action against the United States on the basis of the allegations in the Complaint pursuant to the restrictions of the FTCA, including but not limited to the presentment requirement of 28 U.S.C. § 2675(a).

5. The parties further understand and agree that this stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York
December , 2007

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Attorneys for Plaintiff

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Dated: New York, New York
December 11, 2007

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Peekskill Area Health Center, and
the United States of America

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3. Plaintiff's claims solely against the United States are dismissed without prejudice and without costs or attorney's fees to any party.

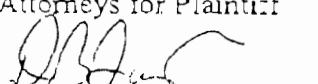
4. The parties understand and agree that this stipulation does not waive any right or defense of any party under the FTCA, including but not limited to Plaintiff's right, if any, to bring an action against the United States on the basis of the allegations in the Complaint pursuant to the restrictions of the FTCA, including but not limited to the presentment requirement of 28 U.S.C. § 2675(a).

5. The parties further understand and agree that this stipulation contains the entire agreement between them, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included herein shall be of any force or effect.

Dated: New York, New York
December 11, 2007

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Dated: New York, New York
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